Book Reviews

A TREATISE ON THE MODERN LAW OF EVIDENCE. By Charles Frederic Chamberlayne. Matthew Bender & Co., 511-513 Broadway, Albany, New York. 1913. Vol. 1, pp. cxxii, 1089; vol. 2, pp. xxviii, 2192; vol. 3, pp. xxxiii, 3470; vol. 4, pp. xxxv, 4956. $30.00.

The active practice of the author and his scholarly work as editor of Best and of Taylor brought the experience of a lifetime to bear on the preparation of this work. The book was not made in a day by writing out the head notes of cases on cards, shuffling the cards, and dealing out a text book. The author had worked out a scientific theory of the basic principles of the subject along the following lines. That the law of evidence consists of a few simple rules—the procedural side: that the cases are but applications of these rules and in the application free play must be given to judicial discretion; this is the administrative side. That the judicial and legislative error has been in making the administrative side consist of hard and fast rules of procedure resulting in decisions on technicalities and reversals for immaterial error. That the future of the law of evidence lies in the recognition of the fact that the essential rules are few and simple and their application must rest largely in sound discretion.

The greatest reformer in the English law of evidence was Bentham but he was not a lawyer and did not write law books. It has taken over a hundred years of ardent work by his followers to get his principles into the law. In recent years Thayer, whose treatise on practical evidence was never written, is exerting a wonderful influence in shaping the law of evidence along rational lines but chiefly through his students of whom Chamberlayne was one. Chamberlayne set himself the difficult task of expounding sound principles to the lawyers directly, but to do this it was necessary to write a book that lawyers would read. This has been in large part accomplished. The work is of encyclopedic comprehensiveness and fullness of citation. The classification of precedents under what may be termed the descriptive word method makes it easy to find the law and a case exactly in point. At the same time there is a terse summary of the precedents by a master of the theory and the case law.

Minute subdivision is pursued in the greatest detail, for example, in the character rule in criminal cases there is a separate discussion of the trait involved for eighteen different crimes. Again no text book has covered the subject of judicial notice so thoroughly. It may be questioned, however, whether the attempt to combine in one book the philosophy and the case law of the subject has been entirely successful. The repetitions due to the treatment of the subject under the two heads of procedure and

administration and the minuteness of detail spoil the work for continuous reading. On the other hand one using the book for ready reference on a particular topic either misses the broad principle exemplified by the topic or is bewildered by the unfamiliar classification and arrangement.

The task was performed under great difficulties; the eye-sight of the author failed almost entirely; the manuscript of the fourth volume was burned in the fire of the state house at Albany and had to be entirely re-written; the untimely death of the author has prevented the finishing touches from being added to the fourth volume, and has cut short the completion of the work by additional volumes on witnesses, the parol evidence rule, and other subjects usually included in treatises on evidence.

A. M. K.

THE DOCTRINE OF JUDICIAL REVIEW, ITS LEGAL AND HISTORICAL BASIS AND OTHER ESSAYS. By Edward S. Corwin. Princeton University Press, Princeton, New Jersey. 1914. pp. vii, 177. $1.50.

The leading essay in this little book, entitled "Marbury v. Madison and the Doctrine of Judicial Review", belongs with a number of other books and essays that have appeared within the last few years, dealing with the question of the power of the courts to declare legislative acts unconstitutional. The essay justifies and upholds, by a very careful examination of the case of Marbury v. Madison, the prevailing practices of the courts.

The essence of the writer's position is perhaps found in Hamilton's argument in No. 78 of the Federalist: "The interpretation of the laws is the proper and peculiar province of the courts. A constitution is in fact, and must be regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body, and, in case of irreconcilable difference between the two, to prefer the will of the people declared in the constitution to that of the legislature as expressed in statute."

The author's general attitude toward judicial review of legislative action is indicated by this passage: "The legislature acts simply upon considerations of expediency. The judges are controlled by precedent, logic, the sensible meaning of words, and their perception of moral consequences. Also, as it happens, our courts are today in a position in construing the constitution to avail themselves of the modern flexible view of law as something inherently developing, in a way never before possible to them. All constitutional limitations setting the bounds between the rights of the community and the rights of the individual have tended of recent years to be absorbed into the constitutional requirement of 'due process of law' and this requirement, in turn, has come to take on the general meaning of 'reasonable law'. So far as constitutional theory itself is concerned there is small ground for the